GOVERNMENT OF ANDHRA PRADESH

ABSTRACT

C.T. Department - Establishment of Legal Cell in the O/o. the Chief Commissioner of State Tax - Proposal of the Chief Commissioner of State Tax - Approved - Orders - Issued.

REVENUE (CT-I) DEPARTMENT

G.O.Ms.No.291 Dated:29.04.2022

Read:

From the Chief Commissioner of State Tax, A.P., Vjayawada, File.No.REV03-17038/47/2021 D SEC-CCT Dated.03.01.2022 and 02.03.2022.

*****

O R D E R:

The Chief Commissioner of State Tax (CCST), following extensive discussions with the Government, submitted a detailed proposal to establish a Legal Cell in the O/o.CCST and also for empanelling Specialized Tax Advocates and Specialized Tax Professionals (CAs/CMAs) to deal effectively with the huge number of cases already pending before the High Court/Supreme Court and those that may be filed in future, facilitating collection of taxes locked up in litigation. Justifying the proposal the CCST stated that there are 5,088 cases involving a revenue of Rs.7,037 cr pending before different legal fora including High Court and Supreme Court under different taxation acts administered by the Commercial Taxes Department. Expeditious disposal of these cases will unlock huge revenues for collection.

2. The Legal Cell proposed by the CCST consists of a Core Departmental Team headed by Retired Additional Commissioner/Joint Commissioner/Deputy Commissioner of Commercial Taxes Department assisted by one senior/middle level consultant/professional having legal background. The Core Departmental Team will be assisted by a panels of specialised tax advocates and specialized tax professionals ((CAs/CMAs), engaged on need basis.

3. The CCST estimated that the expenditure for the legal cell shall be around Rs.1 cr per annum for the Core Team and towards fees for specialized tax advocates and specialized tax professionals payable on per case basis.

4. Submitting his proposal, the Chief Commissioner of State Tax requested the Government to approve the proposal to establish the Legal Cell.

5. Government after careful examination of the proposal and keeping in view the necessity of getting all the tax related cases pending before the Courts disposed expeditiously to unlock the revenues involved in those cases for collection, approve the proposal to establish a Legal Cell in the O/o. the Chief Commissioner of State Tax. The approved proposal with all the details is annexed to this order.

6. The Chief Commissioner of State Tax, A.P., Vijayawada shall take further necessary action in the matter.

(P.T.O.)

7. This order issues with the concurrence of the Finance Dept., vide their U.O. No. 1053396 /HR-II/FIN01-FMU0ASD(REV)/255/2019, dated 06.04.2022.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

MUKESH KUMAR MEENA
SCRETARY TO GOVERNMENT (CT) FINANCE

To
The Chief Commissioner of the State Tax, A.P., Vijayawada.

//FORWARDED::BY ORDER//

SECTION OFFICER

ANNEXURE

(G.O.Ms.No.291,Revenue (CT-I) Department, Dated.29.04.2022)

Details of structure and functioning of Legal Cell together with Qualifications, Method of recruitment and remuneration of the members of the Legal Cell approved by the Government.

The legal cell consists of the following components.

a. Core Departmental team consisting of one retired senior departmental officer AddlC/JC/DC cadre, one experienced Senior/Middle level Consultant/Professional with legal background, one Junior/Young Professional (Legal) and 2 supporting staff (DEOs).

b. Panel of Specialized Tax Advocates.

c. Panel of Specialized Tax Professionals (CAs/CMAs).

Justification for the Legal Cell:

1. There are about 5088 cases pending before various legal forums which include on a Supreme court, High court, VAT tribunal, other appellate GST tribunals involving an amount of Rs.7037 Cr related to various taxation acts for example AP GST Act, AP VAT Act, Central Sales tax Act, AP Goods and Services Act etc.

2. There is need to unlock the above 7037 Crores amount stuck up in litigation and existing system is not able to effectively deal with the above litigations leading to such litigation continuing for a long time without appropriate disposal.

3. Lack of professionals in the department to deal with complicated tax matters.

4. The present GST system is very dynamic and more legally complex than the previous systems where in judgments delivered by different legal forums in different states are at variance in interpretation.

5. Focussed attention by legal professionals is required for qualitative improvement in tax administration.

Structure and functions of the Legal Cell:

The legal cell will contain a core departmental team with a Departmental Officer (Retd.), Senior/Middle level Professional with legal background, legal assistant and supporting staff of Typists/DEOs.

Core Departmental Team:

Sl. No.	Member	No. of team members
1	Retired AddlC/JC/DC of Commercial Taxes dept as Head of the Legal Cell	1
2	1.Senior/Middle level Consultant/Professional having Legal background. 2. Junior/Young Professional having legal background	2
3	Supporting staff	Typist/ DEO-2
Grand Total		5 Nos.

Functions of the Core Departmental Team of the legal cell:

a. To manage the tax related legal affairs of the department and to provide in house consultancy to the relevant officials.
b. To provide legal assistance in preparation of opinions, reports, drafting of legal documents, reply's, reviews etc.
c. To maintain and manage documentation of all legal matters associated with the department.
d. To provide inputs on the diverse range of substantive and procedural questions of law arising in functioning and applicability of the tax acts
e. To liaise with the panel of advocates in preparation of counter affidavits, return statements, vacate stay petitions, writ appeals etc.
f. To coordinate with the officers at various levels for litigation management.
g. To create legal awareness to the department officials on matters of importance.
h. To monitor and supervise the status of cases in various courts of law and to pursue it with relevant stakeholders.

Individual Duties of Core Departmental team:

a. Duties of Head of the legal Cell - Retired AddlC/JC/DC of Commercial Taxes dept –

- To oversee the working of the core professional team and coordination with panel of Advocates and Cas/CMAs as per the defined functions, under the overall supervision of the Addl Commissioner/Commissioner dealing with the legal subject.
- To ensure proper coordination between the field Officers and Panel of Advocates, GPs in High Court and AORs in Supreme Court in all cases pending before the respective Courts.
- The steer the case monitoring of legal cases through APOLCMS assisted by the legal assistant under the supervision of the Nodal Officer.
- To ensure that those cases which are filed by the tax payers but do not figured in APOLCMS are also obtained and communicated to respective Joint Commissioners.
- To ensure that counters, stay vacation petitions, expeditious disposal petitions, review petitions etc are filed by the respective Officers promptly.
- To ensure that the judgments/Orders of the Hon'ble High Court/Supreme Court are followed up by the respective Joint Commissioners for taking necessary action.
- To collate, consolidate and provide opinion of the department on issues of legal importance.

b) Duties of A Senior / Middle Level Consultant/Professional (Legal) :

i. To provide in house legal assistance to the departmental Officials at the HoD level and Division level.

ii. To manage and maintain the documentation of all legal matters of the department and to provide inputs to follow-up on the various decisions of High Court and Supreme Court in the GST matters and to keep a data bank of such decisions to communicated to all the relevant proper officers.

iii. To coordinate with the panel of advocates in preparation of affidavits / Memorandums / Petitions / Appeals, etc.

iv. To assist the department on framing and opinion on issues of legal relevance specially for adverse orders against to government.

v. To maintain record of assignments given to Panel of Advocates and other Tax professionals and prepare performance report.

vi. To do research on legal matters related to GST as and when instructed by the Department.

vii. To assist the head of legal cell in ensuring coordination between field Officers and Judicial forums.

c) Duties of Junior/Young Professional (Legal) –

To assist the Senior Professional in research, data management, coordination and preparation of affidavits / Memorandums / Petitions / Appeals, opinions etc

Qualifications of the Core team:

1. Retired JC/DC of Commercial Taxes department.

2. Senior/Middle level Consultant/Professional having Legal background i.e. a Degree/PG in law from a recognized university with 6 years minimum experience in working with government.

3. Junior/Young Professional (legal) – A graduate in law from a recognized university with minimum 3 years of experience in law.

Method of Selection of Core Team:

- Calling for applications through advertisements in Newspapers.
- Selection through an interview by a Committee of Senior Officers constituted by the CCST.

The Legal Cell will be assisted by panels of Specialized Tax Advocates and Specialized Tax Professionals (need based).

Panel of Specialized Tax Advocates (need based):

S.No.	Forum to be represented	Number of Advocates Proposed
1	Supreme Court	2
2	High Court	5
3	Other forums	2

Panel of Tax Specialized Tax Professionals (CAs/CMAs) (need based):

S.No.	Tax Professionals	Number Required	Field
1	CAs	5	Specialized in Income Tax audit, Statutory audits etc.,
2	CMAs	5	Specialization in manufacturing firms to verify cost audit accounts of taxpayers

Functions of the Specialized Tax Advocates in the panel:

a. To appear before the Supreme Court/ High Court other legal forums and in the cases assigned to them by the department.

b. Preparation of draft memorandums/ petitions/ affidavits in consultation with the core legal team.

c. To file the appeals/petitions etc. within limitation period.

d. To communicate and remove the defects in appeals/petitions as may be pointed out by the registry.

e. To keep the department informed of the important developments in the cases assigned to them.

f. To give opinion on filing an appeal from an adverse decision within a reasonable time.

g. To render all assistance to the law officers of the government including advocate general as and when required.

h. To furnish the department monthly statement of cases represented by him.

i. To perform such duties of legal nature as may be assigned to him by the department.

Functions of Specialized Tax Professionals in the panel (CAs/CMAs).

a. Assisting the assessing authority at the stages of scrutiny, enquiry and investigation or any other process under section 66 of AP GST Act.

b. Assisting the legal team in preparation of counter affidavits, appeals in cases which required complex accounting issues.

c. To advise the department on the changes brought in the GST provisions from time to time so as to enable them to understand the implications of such changes.

d. To regularly train the department officers in examination of financial statements and books of account under GST system and any other work interested to them by the department.

e. Perform such other duties related to cases involving complex accounting methods assigned to him.

f. Preparation of drafts for submission to GST Council on issues related to the GST software systems as assigned from time to time.

Qualifications and Method of Selection for empanelling Specialized Tax Advocates:

Qualifications:

- Eligibility conditions for engagement as Specialized Tax Advocate:

  Be eligible to appear before the respective forum as an advocate and have a minimum experience of five years of handling Indirect Tax Laws before such forum.

Method of Selection:

- For the purpose of engagement, the CCST will call for applications in Proforma to be prescribed.
- A Screening Committee headed by the CCST and Commissioner (State Tax) (Legal) along with Members to be nominated by the CCST will scrutinize the applications.
- The particulars of the applicants' expertise in handling Indirect tax matters, aptitude for interpretation and their suitability to represent the cases of the Department will be examined by the Committee in an interview and an evaluation report along with recommendation of the CCST will be presented to the Government.
- The tenure of the Panel will be for 3 years from the date of appointment. It must be ensured that the process for engagement of new panel of advocates should be initiated at least 6 months before the expiry of the panel.

Qualifications and Method of Selection for empanelling Specialized Tax Professionals (CAs/CMAs):

Qualification:

1. Be a member of the ICAI/ICWAI and should have valid full time certificate of practice issued by the respective institutions.

2. Possess experience of at least five years of practice in the field of Indirect Tax matters.

3. The CAs/CMAs with a certified course in Data analytics shall be given preference.

4. Not have been held guilty of any Professional misconduct under the Cost and Works Accountants Act, 1959 or Chartered Accountants Act 1949 during past five years or penalized under Chapter V of the Financial Act, 1994 or Customs Act 162or Central Excise Act 1944.

Method of Selection:

- For the purpose of empanelment, the CCST will call for applications in a Proforma to be prescribed.
- All the applications received shall be scrutinized by a Committee nominated by the CCST, AP under the chairmanship of the Commissioner (Legal).
- The basic criteria for selecting the applicant would be the experience in audit/consultancy/representation in the GST matters.
- The selected candidates shall be called for a discussion by the CCST, AP for final empanelment.
- The final panel shall be notified and may be modified as and when required basing on the review of performance from time to time.

Budget for the Legal Cell:

While the members in the Core Professional team will be paid monthly remunerations, the Advocates and CAs/CMAs shall be paid on per case basis as shown below.

Core Professional Team:

Sl. No.	Member	No. of team members	Amount per month	Amount per year
1	Head of Legal Cell - Retired JC/DC of Commercial Taxes.	1 No.	As per government guidelines for re-employment of retired employees.	Rs.12,00,000/- (Approx.)
2	Senior/Middle level Professional having Legal background. Junior/Young Professional (Legal)	1 No each	As per GOMs No 89 Finance HR.I Dept dt 16.7.2015	Rs18,00,000/- (Approx.) Rs 9,00,000/- (Apporox)
3	Supporting staff - DEOs	2	Rs 18,500/ X 2 =Rs 37,000/ pm through APCOS	4,44,000/
Grand Total		4 Nos.		Rs.43,44,000/-

Fee Structure of Specialized Tax Advocates (As per the guidelines decided by the Ministry of Finance GoI for Income Tax dept Instruction No 7/2016 dt 7.9.2016)

S.No.	Fee Structure	Rs.
1	Hearing Charges (First Hearing)	3000
2	Subsequent Hearings	1500
3	Drafting counter (per case)	3000

Along with the Retainers fees and other miscellaneous charges as mentioned in the guidelines of GoI above.

Fee Structure of Specialized Tax Professionals (CAs/CMAs):

S.No.	Fee Structure		Rs.
1	Conducting audit under Section 66 of GST (per audit)	If Turnover is >100 Crores	40,000/-
		If Turnover is <100 Crores	25,000/-
2	Training per session		3,000/-
3	Assistance in Drafting counter (per case)		3,000/-
4	Assistance in Data Analytics (for Imparting domain Knowledge) monthly basis		50,000/-

MUKESH KUMAR MEENA
SCRETARY TO GOVERNMENT (CT) FINANCE